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HUMAN RIGHTS COMMITTEE

DOCUMENT SUBMITTED BY THE GOVERNMENT OF MEXICO BY NOTE VERBALE DATED 18 JULY 1994, RELATING TO CONCLUDING COMMENTS ADOPTED BY THE HUMAN RIGHTS COMMITTEE AT THE END OF THE CONSIDERATION OF THE THIRD PERIODIC REPORT OF MEXICO*

OBSERVATIONS ON THE COMMITTEE'S COMMENTS

In addition, the Government of Mexico appreciates and takes note of the comments made by the members of the Human Rights Committee in connection with the third periodic report on the implementation of the International Covenant on Civil and Political Rights, as contained in document CCPR/C/79/Add.32, and takes the opportunity to make the following observations and clarifications.

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* The Third Periodic Report of Mexico was considered at the fiftieth session of the Committee (1302nd to 1305th meetings, held on 28 and 29 March 1994).

The concluding comments of the Committee are contained in document CCPR/C/79/Add.32.

With regard to section D (Principal subjects of concern), we would like to make the following observations:

In paragraph 8 of the Committee's comments, it is indicated that amparo proceedings have proved to be ineffective in cases where individuals have been irregularly detained, since they do not guarantee their immediate release. In this connection, the Committee considers that the rights provided for in article 9 of the Covenant are not fully guaranteed in Mexico. This contention calls for the following observations:

The provisions of article 9 of the Covenant concerning liberty and security of person are incorporated in Mexican legislation, and one of the most effective mechanisms for guaranteeing their observance is amparo proceedings.

Amparo is the basis of the Mexican legal system and the principal means of controlling the lawfulness of acts of the authorities. Amparo proceedings enable individuals to challenge acts of the authorities, whether federal or local, which violate or restrict the rights granted to them by law; their scope extends to the entire national legal order (from a treaty to a municipal regulation) and judgements in such proceedings take precedence over any other judicial decision.

Amparo has restitutory effects. In other words, if the proceedings establish that the authority allegedly responsible acted unlawfully, the judgement rendered will seek to nullify the acts challenged and to restore to the individual the full enjoyment of the rights violated.

The procedure is initiated at the request of the aggrieved party:

- By persons whose life is endangered by acts of an authority, who have been detained without a court order, deported or banished or are subject to infamous punishments such as mutilation, flogging, torture, excessive fines, etc.;

- Against legal decisions taken by federal or local authorities which the individuals deem to be unconstitutional and injurious to them;

- Against final judgements, (i.e., judgements not admitting of any further appeal which might lead to their being modified), which are rendered by ordinary courts in judicial proceedings handled by them and cause injury to individuals;

- In general, against acts or omissions of the authorities, whether federal or local, which affect individuals, provided that there are no other prior means of defence available to them.

Once the application is submitted, the judge in the case must take a decision regarding the suspension of the act challanged. The suspension must be requested by the person concerned, but bearing in mind that it is such suspension that enables the case to proceed, the judge is obliged to grant it ex officio in the case of acts entailing deprivation of life or liberty or attacks on the personal integrity of individuals, as well as in those cases

where, if the suspension is not granted and the acts contested are carried out, it would be impossible to restore the rights violated.

A judge who fails to order suspension when he ought do so or the official responsible who does not suspend the act after being called upon to do so incurs responsibility and may even be removed from office.

In the case of amparo proceedings brought by holders of common land, co-owners, workers, trade unions, minors lacking legal capacity, defendants or persons in danger, or involving manifest breaches of the law, the officiating judge must rectify any mistakes or omissions which he finds in the application, without changing the facts set out therein. This procedure is known as supplementing the complaint.

Where judgements in proceedings are favourable to the individuals concerned, they must be enforced by the authorities held to be responsible, who are obliged to inform the judge of such compliance. No case can be ordered to be filed unless it has been established that the judgement rendered has been executed.

If the circumstances of the case permit, the officiating judge may avail himself of the law enforcement authorities to enforce the judgement himself, should the official responsible fail to do so within the allotted time-limit.

If the official responsible refuses to execute the judgement, despite attempts to induce him to do so, or is guilty of evasion or repetition of the act, he may be removed from office or remanded in custody.

In cases involving protection of life, liberty or personal integrity, the amparo procedure is considerably more flexible:

- The application may be filed at any moment, i.e., not subject to any time-limit, on any day and at any hour and may be examined at any time.

- The proceedings may be instituted by the aggrieved party or by anyone acting as his representative, without the latter having to establish his identity. For the application to be processed, all that is needed is to indicate the act, the authority responsible and the whereabouts of the injured party.

- Application may be made by mail or telegraph, and if the circumstances are serious, the judge shall, by the same means, order the measures that he deems necessary to enable the case to proceed.

- Suspension is granted ex officio. The authorities responsible are obliged to suspend the act which is the subject of the complaint as soon as they receive the order of the judge. Should the official responsible fail to comply with this order, he will be dismissed. All authorities must cooperate with the judge in the case in the exercise of his functions.

- In cases where there is no competent judge in the place where the aggrieved person is situated, the application may be submitted to the local judge who, for the purposes of the amparo proceedings, becomes an officer of the court. As soon as the effects of the act complained of are suspended, the proceedings must be referred to the judge who is to deal with the application.

Under Mexican law, persons may be detained, other than in cases of flagrante delicto, only by order of a competent judicial authority, complying with each and every one of the formalities stipulated by law (prior complaint, existence of an offence warranting a custodial penalty and of sufficient evidence pointing to the likely responsibility of the accused). The authorities enforcing the order must bring the accused before the judge without any delay and under their strict responsibility.

No judicial detention may exceed 72 hours from the time when the accused is placed at the disposal of the judge, unless it is backed up by a detention order and the proceedings provide sufficient information to substantiate the criminal nature of the alleged offence and the likely responsibility of the suspect. If no detention order has been issued by the end of this period, the custodial staff at the place where the detainee is being held must draw the matter to the attention of the judge and, if he fails to take action within the following three hours, must set the accused free.

Any detention or attempted detention which is not in compliance with the aforementioned requirements entitles individuals to bring amparo proceedings, with all the consequences that have already been mentioned.

It can be seen that amparo is in fact an effective means of protecting the rights of individuals, and that the rights proclaimed by article 9 of the Covenant are guaranteed by the Mexican legal system.

Paragraph 9. In this paragraph, the Committee indicated that killings of journalists in Mexico have reached alarming proportions. In this connection, we would remind the Committee that the National Human Rights Commission (CNDH) has a special programme concerning attacks on journalists, since it is essential for this profession that the authorities should act in a manner that fully respects the individual guarantees of the representatives of the various media in view of the vital importance of their work for society.

On the basis of the information provided by those responsible for this programme, it cannot be said that there are serious violations of freedom of expression, or that murders of journalists in Mexico are frequent. On the contrary, the complaints lodged on this account have diminished.

According to the official report on this programme, issued on 6 June 1994, a total of eight complaints were recorded during CNDH's previous year of activity (i.e., June 1993-June 1994); of these, two refer to arbitrary detention, two to abuse of authority, one to delays in the administration of justice, one to injury, one to denial of justice and one to closure by administrative decision. It should be noted that seven cases have been concluded and one is pending.

Moreover, of the 11 complaints which the Union of Democratic Journalists submitted to CNDH in November 1992, 5 relate to arbitrary detention, 4 to violation of the freedom of expression and 2 to delays in the administration of justice. All these cases have been resolved.

However, at the time of writing, 11 of the 14 recommendations included in CNDH's annual report for 1992-1993 are still considered to have been only partially implemented. Two of the three that have been implemented relate to murders.

Paragraph 10. As was stated in the oral presentation to the Committee, the right of peaceful assembly is fully respected in Mexico in conformity with article 21 of the Covenant. The frequency and scale of demonstrations in Mexico City have recently led one segment of society to stress the need to regulate these events so as not to disrupt or disturb the daily life of the majority of citizens.

As for the assertion that striking workers have been severely repressed in violation of article 22, we would point out that in Mexico the right to strike is exercised fully and peaceful demonstrations by striking workers are not put down violently.

Under labour law, which is the framework for the Committee's concern regarding the exercise of the right to strike in Mexico, the freedom of association and the entitlement of workers to strikes and job stoppages are recognized by the Constitution in two different ways:

- As a general right of all persons to associate permanently with others in order to achieve common aims or to meet temporarily and in a peaceful manner for any lawful purpose;

- As a social right specific to workers and employers to join together in defence of their respective interests, forming trade unions, professional associations, etc., and to engage in strikes or work stoppages.

The object of a strike is to harmonize the rights of labour with those of capital and to achieve a balance between the various factors of production. This eminently social nature gives the strike a special character that makes it necessary to provide legal guarantees of its free exercise. Thus, the authorities must not only refrain from impeding or intervening in strikes by workers but must also provide workers with all the facilities they need to exercise their right fully. The Conciliation and Arbitration Boards which deal with strike disputes are empowered to resolve any issue relating to this kind of action on a 24-hour, year-round basis.

Since strikes involve parties with differing interests, conciliation is an important means of settling disputes. With this in mind, the Conciliation and Arbitration Boards have special mediation units working round the clock to try and reconcile the parties in dispute. Most strike calls are resolved through conciliation.

Strike must be limited to cessation of work. Strikers must refrain from committing violent acts against persons and property, which might be a ground for declaring the movement illegal, apart from any criminal proceedings that might be brought against those responsible.

Paragraph 12. With regard to the application of the special laws for indigenous communities, particularly in Chiapas, we reaffirm the reply given to the question put by Mrs. Evatt of Australia. There is currently a restrictive Penal Code in Chiapas, but one of the points agreed in the negotiations with the Zapatista National Liberation Army (EZLN) is the repeal of that Code and the promulgation of a new one geared to respect for individual guarantees and political rights, with full legal safeguards for their exercise.

The consequences of the changes to the system for the administration of justice in Chiapas will enable the goal of compliance with the legal order to be reconciled with full respect for the rights of the indigenous communities.

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HUMAN RIGHTS COMMITTEE

LETTER DATED 27 JULY 1995 FROM THE PERMANENT REPRESENTATIVE OF UKRAINE TO THE CHAIRMAN OF THE HUMAN RIGHTS COMMITTEE, RELATING TO CONCLUDING COMMENTS ADOPTED BY THE COMMITTEE AT THE END OF THE CONSIDERATION OF THE REPORT OF UKRAINE*

Having familiarized myself with the content of the Comments of the Human Rights Committee on the fourth periodic report of Ukraine, I would like to express my appreciation of the work done by the members of the Committee under your able stewardship in order to elaborate recommendations so that fundamental and positive changes in Ukraine, noted by the Committee with satisfaction, be consolidated and further deepened. I can assure you, Sir, that they will be given the most serious consideration by the competent Ukrainian authorities.

At the same time I would like to draw your attention and that of the Members of the Committee to some issues which, in my view, call for additional clarification. I am referring, inter alia, to paragraph 16 of Part C "Principal subjects of concern" of the Comments which mentions "the requirement of exit visas" whereas the institute of "exit visas" was effectively abolished by the Law of Ukraine on Procedure for Leaving Ukraine and Entering Ukraine to be followed by Ukrainian Citizens (adopted 21 January 1994) which stipulates issues of one main document necessary for leaving the country - passport for foreign travel, as well as the travel document of a child and sailor's ID).

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* The fourth periodic report of Ukraine was considered at the fifty-fourth session of the Committee (1418th to 1420th meetings, held on 11 and 12 July 1995).

The concluding comments of the Committee are contained in document CCPR/C/79/Add.52.

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I would also like to stress that a basic refugee determination procedure (para. 17 of Part C "Principal subjects of concern" of the Comments) has been already established in the Law of Ukraine on Refugees (24 December 1993). The task of carrying out the provisions of this law, including determination of the refugee status has been entrusted to the Migration Service of Ukraine created by the Decree of the Cabinet of Ministers of Ukraine in June 1994. Refugees whose status is recognized are being provided with the refugee's certificate: corresponding regulation has been approved by the Cabinet of Ministers on 15 June 1995.

Finally, I would like to underscore that the Declaration of the Rights of Nationalities of Ukraine, as well as the Law on National Minorities, cannot but deal - by definition - with the rights of specific minority groups, namely - national, or, using terminology common in many countries, ethnic minorities. It defines rights of national/ethnic minorities in their entirety, including linguistic, cultural and religious rights. Moreover, cultural and rights of the citizens of Ukraine have been specifically guaranteed in two other legislative acts: the Law of Ukraine on Languages and the Law of Ukraine on the Freedom of Consciousness and Religious Organizations. Positive record of Ukraine in securing minority rights, absence of pattern and practice of discrimination have been confirmed by a number of authoritative international bodies. Being, however, aware of the complexity of these issues the Government of Ukraine consistently looks for the ways to preserve and further develop harmonious relations among minorities in Ukraine, addressing without delay existing issues of contention.

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